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**(2011) 01 KL CK 0225**

**High Court Of Kerala**

**Case No:** Criminal M.C. No. 129 of 2011

Ramakrishnan

APPELLANT

Vs

State of Kerala

RESPONDENT

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**Date of Decision:** Jan. 14, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 205, 205(2), 313, 82, 83
- Penal Code, 1860 (IPC) - Section 325

**Citation:** (2011) 2 Crimes 699 : (2011) 1 KLT 842

**Hon'ble Judges:** Thomas P. Joseph, J

**Bench:** Single Bench

**Advocate:** R. Padmakumar, for the Appellant; K.J. Mohammed Anzar, Public Prosecutor, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

Thomas P. Joseph, J.

Petitioner is accused in C.C. No. 230 of 2010 of the Court of learned Judicial First Class Magistrate-I, Mavelikkara facing charge for offence punishable u/s 325 of the Indian Penal Code. Petitioner who is working in Rajasthan was granted bail by the learned Magistrate on 29.05.2010 and he was exempted from appearance u/s 205 of the Code of Criminal Procedure (for short, "the Code") as per order dated 31.5.2010. Petitioner was being represented by his counsel in the subsequent postings. On 22.12.2010 counsel was not present and thereon learned Magistrate cancelled exemption as well as bail granted to the Petitioner and issued non-bailable warrant to him. Steps were also initiated under Sections 82 and 83 of the Code and the case was posted to 22.2.2011. That order is under challenge.

2. I have heard learned Counsel for Petitioner and the Public Prosecutor who took notice for Respondent. Learned Counsel contends that since exemption u/s 205 of the Code had been granted to the Petitioner it was not legal or proper to cancel the

said order without directing Petitioner to appear in Court. It is also argued that initiation of proceedings under Sections 82 and 83 was not warranted and at any rate it was not legal to initiate steps under the said provisions simultaneously.

3. So far as the first limb of argument is concerned, I find myself unable to give my assent to it. Section 205(2) of the Code states that the Magistrate inquiring into or trying the case may in his discretion at any stage of the proceedings direct the personal attendance of the accused and if necessary "enforce such attendance in the manner herein before provided." That provision according to the learned Counsel required learned Magistrate to issue summons to the Petitioner after cancellation of the order granting exemption u/s 205 of the Code. That argument cannot be accepted since what is referred to in Sub-section (2) of Section 205 is not directing attendance of accused by way of issue of summons after cancellation of exemption granted u/s 205 of the Code. There may be contingencies even when the order u/s 205 of the Code is in force, for e.g., attendance of accused is necessary for examination u/s 313 of the Code or identification by witnesses. Sub-section (2) of Section 205 of the Code takes care of such situations.

4. Next argument is in relation to steps initiated under Sections 82 and 83 of the Code. Section 82 of the Code states that if any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time. Annexure-A1 order passed on 22.12.2010 does not show that learned Magistrate had any such satisfaction so that the proceeding u/s 82 of the Code should be initiated. Instead, learned Magistrate only issued non-bailable warrant to the Petitioner. Proceedings u/s 82 of the Code could be initiated only when the Court has reason to believe that Petitioner against whom warrant has been issued has either absconded or concealed himself. In the absence of such satisfaction learned Magistrate was not correct in issuing steps u/s 82 of the Code.

5. Order dated 22.12.2010 also suffers an illegality in that learned Magistrate could not have initiated proceedings under Sections 82 and 83 of the Code simultaneously. For, the proceedings u/s 83 follows proceedings u/s 82 of the Code as is clear from Sub-section (1) of Section 83. Sub-section (1) of Section 83 states that the Court issuing a proclamation u/s 83 may for reasons to be recorded in writing "at any time after issue of proclamation" order attachment of any property. In other words, proceedings u/s 83 of the Code has to follow the order passed u/s 82 of the Code as well. The impugned order does not show that the proceeding u/s 83 of the Code was issued following the order u/s 82 of the Code. Instead, steps under Sections 82 and 83 of the Code have been ordered simultaneously. Hence that cannot stand and is liable to be set aside.

6. Resultantly this petition is allowed in part to the extent it concerned initiation of proceedings under Sections 82 and 83 of the Code and the order of the Court below to that extent is set aside. Petitioner is granted one month's time to appear in the Court below and seek regular bail. Non-bailable warrant issued to the Petitioner will stand in abeyance during the said period. It is made clear that it will be open to the Petitioner to prefer fresh application for exemption u/s 205 of the Code and if any such application is filed, learned Magistrate shall take into account the fact that Petitioner is working in Rajasthan and pass appropriate order on the application as provided under law.